

COURT OF APPEALS OF THE STATE OF
WASHINGTON

DIVISION TWO

MOON HUR and SEUNGJA HONG, Appellant

v.

PATTI KIM, Respondent

AMENDED BRIEF OF APPELLANT

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I. INTRODUCTION

Appellants, Moon Hur and Seungja Hong (hereafter, “Hur”)

Respectfully submits their brief seeking the reversal of the Superior Court October 22, 2021 Findings of Fact and Conclusions of Law, Judgment and attorney fees in favor of Patti Kim (hereafter “Kim”) in the amount of \$40,800, with statutory attorneys’ fees of \$200.00, regarding the Pierce County Case No. 20-2-07303-8. Hur also seeks reversal of the Superior Court May 06, 2021 Order On Motion where the Court Ordered that Kim’s Motion to Dismiss was granted and Hur’s counterclaims were dismissed with prejudice.

Two Notice of Discretionary Reviews were filed by Hur in this Court that were consolidated into this appeal on December 2, 2021 (CP 2488). The first was filed on January 4, 2021 where Hur sought Discretionary Review of the Order Denying Defendant’s Motion for Revision entered on December 10, 2020 and the Revised Order Denying Defendant’s Motion for Revision entered on December 11, 2020. (CP 362 – 368). The second was filed on June 7, 2021 where Hur sought discretionary review of the Order Denying Motion for Reconsideration and the Motion to Dismiss entered on May 6, 2021. (CP 1470 – 1488). On December 2, 2021, the present case and Hur’s other pending Discretionary

Review Case was consolidated by this Court pursuant to RAP 3.3 (a). (CP 2488).

Hur filed a Motion to Modify the Court of Appeals Commissioner's August 17, 2021 ruling denying review in this Court pursuant to RAP 17.7. (Appendix II) In that Motion to Modify Hur raised the issue that the trial court's interpretation of Proclamation 20-19, in its December 11, 2020 Order (CP 367 – 368), should have considered Proclamation 20-19.4 as no writ had been issued and the sworn affidavit requirement pursuant to Proclamation 20-19.4 was applicable. Additionally, Hur raised that the trial court's misapplication Proclamation 20-19 requires reversal of its December 11, 2020 Order. (*See* Appendix II, P. 3). As this Court has held, and is applicable here, a writ of restitution issued after the effective date of Proclamation 20-19.4 requires that the affidavit requirement in that version of the proclamation applied. The commissioner's decision should be modified accordingly. *See Dzaman v. Gorman*, No. 55460-7-II, 2021 WL 3046849 (Jul 20, 2021).

These errors, and others, require this Court to reverse and remand for a new trial before a new judge, and any other proceedings necessary to ensure the full and fair resolution of Mr. Hur's claims. At a minimum, this Court must vacate the \$40,800 judgment against Mr. Hur for over \$200 in attorney fees and costs premised on the trial court ruling that Ms. Kim had been damaged as a result of the failure of the Defendants to vacate the Residence in the amount of \$37,800 for the loss or rental opportunity for

the period May 202 through October 2021. (CP 2363). Plaintiff is entitled to recover unpaid rent for the period February, march and April 2020 at the agreed rental of \$1000.00 totaling \$3000.00. In the event Defendants continue to occupy the Residence after October 31, 2021, Plaintiff will be entitled to continue damages as part of the judgment in the amount of \$72.00 for each day after October 31, 2021 Defendants continue to occupy the Residence...Plaintiff is entitled to entry of judgment int eh amount of \$40,800. (CP 2363).

II. ASSIGNMENTS OF ERROR

1. The magistrate erred by granting the Order on Show Cause on October 1, 2020. (CP 114 – 115, NP 68 - 69) (App. C)
2. The trial court erred in entering its Order of Dismissal on May 6, 2021, thus finding that “no material issue of act existing,” the Court concluded that Ms. Kim was entitled to an Order dismissing Mr. Hur’s counterclaims as a matter of law and dismissing his counterclaims with prejudice and effectively ending litigation on Hur’s counter claims.(1017 - 1018) (App. O)
3. The trial court erred in entering its Order of Denying Hur’s Motion for Reconsideration on June 4, 2021. (CP 1254 – 1255) (App. P)
4. The trial court erred in entering its Order granting Plaintiff’s Motion to Dismiss entered on May 6, 2021. (1017 – 1018) (App. O)
5. The trial court erred in entering its Order Denying Defendant’s Motion for Revision entered on December 11, 2020. (243 – 244) (App. F)
6. The trial court erred in entering its Finding of Fact and Conclusions of Law on October 22, 2021. (2362 – 2363) (App. Z)

7. The trial court erred in entering its Judgment; Attorney Fees Finding of Fact; Conclusions of Law entered on October 22, 2021. (2362 – 2363). (App. Z & AA)
8. The Commissioner erred in denying Hur’s Discretionary Review on August 17, 2021 in finding that the Appellant failed to show the trial court probably erred in denying their motion for review. (CP 1566). (App. GG). Also incorrectly finding that Mr. Hur did not demonstrate that Proclamation 20-19.4 applied retroactively to the writ of restitution. (CP 1565). (App GG)
9. The trial court erred in entering its Order Directing Issuance of Writ of Restitution on October 13, 2021. (CP 2286 -2287). (App. X)

III. STATEMENT OF THE CASE

A. On August 17, 2020 Patti Kim Filed Unlawful Detainer Agreement as defined in RCW 59.12.030(2) Requesting Writ of Restitution pursuant to RCW 59.12.090. A Commissioner Entered an Order for the Pierce County Superior Court Clerk to Issue a Writ of Restitution on October 1, 2020.

This present case arises out of an agreement¹ between two parties to enter into rent to own of property where Moon Hur and Seungja Hong currently reside commonly known as 11006 E 52nd St Tacoma, WA 98404 (hereafter the “Property” or “Subject Property”). (CP 101, 103, 190-191, 193-194, 732 - 734). Mr. Hur and Ms. Hong have fully performed on the option to purchase the Property as they attempted to make the final payment to Ms. Kim on or before January 28, 2020 where she refused to pick up the

¹ Appendix F– [Appendix F – at P. 83, and Supporting Declaration P. 69, ¶10-26 of Defendant’s Moon Hur’s & Seungja Hong’s Motion For Revision, Supporting Declaration at Exhibit I

package². (CP 107, 200). Rather, than uphold their agreement to sell the property to Mr. Hur and Ms. Hong, Ms. Kim attempted to list the property. (CP 181, 187 – 188, CP, 324). Additionally, Kim’s notice of intent to sell failed to meet the Governor’s Proclamation 20-19.5 requirements as the letter was not a signed affidavit under penalty of perjury. (CP 324).

Mr. Hur and Ms. Hong have made all rental payments as well as all the agreed rent to own payments. (CP 184 - 185, 193 – 189 - 191, 194, 204). The period or term set by the parties was not a “firm” period. (CP 184 – 186, 190- 191, 193 – 194, 732 - 734). Instead there was a revision of their agreement to allow Mr. Hur and Ms. Hong, a period to get the last amount of the loan to complete the “rent to own” purchase. (CP 184 – 185, 732 - 734). Ms. Kim filed her initial Unlawful Detainer Complaint on August 17, 2020 where she claimed in part that Mr. Hur and Ms. Hong were month to month tenants, she suffered damages and she was requesting issuance of writ of restitution restoring possession of the Residence. (CP 1 – 4).

Ms. Kim filed a Motion for Order to Show Cause on September 15, 2020. (CP 32 – 34, NP 1 – 3). The Court entered the Order to Show Cause, on Ms. Kim’s Motion on September 15, 2020. (CP 53 – 54, NP 22 – 23). Ms. Kim filed a Motion for Writ on September 17, 2020 (CP 55 – 56, NP 24 – 25) where she requests a writ of restitution pursuant to RCW 59.18.370 directing the Sheriff to return possession of the property. (CP 55, NP 24).

² Appendix F – [Appendix F– at p. 66-67, ¶21-25 and P. 67 ¶ 1-25. Defendant’s Moon Hur’s & Seungja Hong’s Reply Motion For Revision, Supporting Declaration at Exhibit F

In her Motion for Writ Ms. Kim claims to be the owner of the Property, located at 1106 E. 52nd St. Tacoma, WA. Ms. Kim's Motion for Writ again references Mr. Hur and Ms. Hong as being month to month tenants who were served a 30-day notice of termination on April 30, 2020. (CP 55, 61 – 63, NP 24 – 25). Ms. Kim referenced the Governor's Proclamation 20-19.3 as an exception to the prohibition on evictions by providing a notice of intent to sell, which was not signed by her, but was signed by her attorney. (CP 55 – 56, 64 – 70, NP, 26 – 27, 28 – 29, 39). The specific language of the referenced Governor's Proclamation states the following:

Landlords, property owners, and property managers are prohibited from seeking enforcing, or threatening to seek or enforce, judicial eviction orders, involving any dwelling or parcel of land occupied as a dwelling, unless the landlord, property owner, or property manager... shows that at least 60 days' written notice were provided of intent to...sell the property. (CP 70, NP 39).

Mr. Hur and Ms. Hong appeared in the case on August 31, 2020. They responded and rejected Kim's claims stating in part that all payments, in relation to the rent to own purchase of the subject property had been paid to Ms. Kim, regarding the subject property (NP 44 – 49). Mr. Hur and Ms. Hong claimed that Ms. Kim was precluded from selling the property because of their rent to own agreement. (CP 90 - 95, 98- 107, 101, 102- 103, 108 – 110, 111 – 113, NP 50 - 65). Mr. Hur's response claimed in part that Ms. Kim rejected the final \$90,000 payment of the rent to own agreement. (CP 94, 104 – 105, 106 – 107, NP 56 – 59). After arguments were heard an Order on Show Cause was entered on October 1, 2020. (CP 114 – 115, NP 68 – 69).

Mr. Hur and Ms. Hong filed their Answer with Counter Claims on September 30, 2020. (CP 75 – 87). Their claims included the following: (1) Breach of Contract; (2) Unjust Enrichment; (3) Conversion; (4) Fraudulent Inducement; (5) Violations of the Consumer Protections Act; (6) Injunctive Relief; and (7) Negligent Misrepresentation.

B. The Agreement Between Mr. Hur and Ms. Hong and Ms. Kim to Purchase the Property Did Not Expire.

Mr. Hur and Ms. Hong have acted reasonably and paid Ms. Kim per their agreement to purchase the Property. (CP101 – 107, 181, 187- 187, 324, 732 – 734, 725 – 726). The translated July 31, 2019 email from Ms. Kim reads “Think of this as a receipt You’ll repay you soon.” The remaining balance from the rent to own agreement was \$90,000.00. (CP 734). This is the same amount that Mr. Hur had sent Ms. Kim on January 29, 2020 but was refused by her. (CP 105, 107). Instead Mr. Hur received an email from Ms. Kim on February 14, 2020 indicating that she had listed the property (CP 181, 187 – 188, CP, 324). Ms. Kim later testified that she had received the payment from Mr. Hur and returned it. (RP 122). Mr. Hur and Ms. Hong had made all payments as agreed. Yet. Ms. Kim rejected the final \$90,000.00 payment and listed the property, rather than complete the agreement to purchase with Mr. Hur and Ms. Hong. (CP 101 – 107, 732 – 734, 725 – 726).

C. Ms. Kim’s Letter of Intent Failed to Meet the Exception of the Governor’s Proclamation 20-19

The exception to eviction was raised in Kim's Motion For Writ in the Governor's July 24 Proclamation 20-19.3 (hereafter "Proclamation") which at the time stated: "This prohibition applies unless the landlord, property owner, or property manager...provides at least 60 days' written notice of intent to...sell the property." (CP 70). The issue here is that Ms. Kim's Letter of Intent to Sell fails to meet the requirements of the Governor's Proclamation current 20.19 which prohibit landlords, property owners, and property managers from seeking or enforcing, or threatening to seek or enforce, judicial eviction (CP 2232 – 2239). Ms. Kim's Letter of Intent was signed by her attorney and was not "in the form of an affidavit signed under penalty of perjury", as required under Proclamation 20-19.4. (CP 2236). Here, Mr. Hur and Ms. Hong have filed a Motion to Modify which is currently pending with this Court. The Court has consolidated both cases into the present case. The Appellants believe *Dzaman v. Gorman*, No. 55460-7II, 2021 WL 3046849 (Jul 20, 2021) is controlling on this issue.

The Court entered an Order granting an issuance of the Writ of Restitution on October 1, 2020. (CP 114 – 115, NP 68 - 69). Proclamation 20-19.4 applies retroactively after on Order granting issuance of the Writ of Restitution. However, no Writ has been issued by the Superior Court Clerk prior to the Governor issuing Proclamation 20-19.4 on October 14, 2020. (CP 243 – 244) and (CP 2232 – 2239). The trial court's interpretation of Proclamation 20-19, in its December 11, 2020 Order, should have considered Proclamation 20-19.4 as no writ had been issued and the sworn

affidavit requirement pursuant to Proclamation 20-19.4 was applicable. Thus, because no writ had been issued the requirement that the affidavit be sworn, as stated in Proclamation 20-19.4, applied when the December 11, 2020 Order was issued. (CP 2232 – 2239).

An Order for Writ of Restitution was entered on October 13, 2021 by the trial Court. (CP 2286 – 2287). A writ of restitution was issued by the Pierce County Clerk's Office. (CP 2403). However, on October 29, 2021 the Sheriff filed a Return on Writ stating in part:

the body of the document lacks statutorily required language, and the language contained therein is more consistent with a Writ of Ejectment which is not the appropriate type of writ for an unlawful detainer case. These problems could have been avoided by adhering to the court rules requiring electronic filing.

(CP 2408 – 2409). No additional writs have been issued on this property.

D. The trial court dismissed Mr. Hur and Ms. Hong's counterclaims against Ms. Kim which were: (1) Breach of Contract; (2) Unjust Enrichment; (3) Conversion; (4) Fraudulent Inducement; (5) Violations of the Consumer Protections Act; (6) Injunctive Relief; and (7) Negligent Misrepresentation.

Mr. Hur and Ms. Hong filed their answer to Kim's Complaint and counterclaims on September 30, 2020. (CP 75 – 87). In their counterclaims the Appellants explained their previous rental payments to Ms. Kim. (CP 76 - 77). As well as the breakdown of their payments to Ms. Kim towards the purchase of the Subject Property. (CP 77 - 82). On August 15, 2016 Mr. Hur and Ms. Hong made an initial down down payment towards the purchase of the Subject Property in the amount of \$150,000 in exchange for

Ms. Kim providing ownership of the Property after completion of the payment agreement. (CP101). It was customary for Ms. Kim to occasionally send Mr. Hur an email with the breakdown of the payments via email. (CP 78, 725 – 726, 728 – 730, 2340, 2341). Their agreement provided that Mr. Hur make the following payments: (1) \$10,000.00 on September 8, 2017; (2) \$8,000.00 on December 23, 2017; (3) \$10,000.00 on May 28, 2018; (4) \$10,000.00 on July 28, 2018; (5) \$10,000.00 on July 2019. (CP 183, 193 – 194, 190 – 191, 771 - 784).

All of these payments were made by Mr. Hur, accepted by Ms. Kim and memorialized in an email sent by Ms. Kim to Mr. Hur. (CP 78, 725 – 726, 728 – 730, 2340, 2341, 2356 - 2358). Mr. Hur made every initial payment of \$60,000 to Ms. Kim towards the purchase of the Subject property. A final payment of \$90,000.00 was remaining to be paid as noted in Ms. Kim's July 31, 2019 email. (CP 733 – 734). In this email Ms. Kim states "Think of this as a receipt You'll repay you soon." (CP 184 – 85, 732 – 734). This July 31, 2019 communication clearly shows that the remaining payment of \$90,000 was outstanding and Ms. Kim knew Mr. Hur had borrowed the funds as she stated, "You'll repay soon." (CP 732 – 734). Ms. Hong and Ms. Kim are cousins. Once Mr. Hur obtained the loan, in the amount of \$90,000.00, he made the final payment for the purchase of the Subject Property on January 28, 2020. (CP 803). However, Ms. Kim refused to pick up the final payment. (CP 805). Rather, on February 14, 2020 Mr. Hur and Ms. Hong received an email from Ms. Kim and her realtor stating

that the Property had been listed and the realtor Mr. Yun could assist with them getting a loan “[i]f you want to buy this property.” (CP 486). This was in clear breach of the agreement that Mr. Hur and Ms. Hong had with Ms. Kim. Ms. Kim never accepted Mr. Kim’s final \$90,000 payment (CP 805, 803). Instead Ms. Kim filed the Unlawful Detainer Action which is the subject of this appeal. (CP 1-4).

The trial entered an Order of dismissal of partial counterclaims on May 6, 2021 (CP 1013 – 106). In that Order the Court found that the Appellants failed to make a response to Ms. Kim’s Motion to Dismiss. (CP 1017). And the Court concluded that the “Defendants failed to come forward with evidence raising a material issue of fact. No material issue of act existing, this Court concludes that Plaintiff is entitled to an Order dismissing Defendants’ counterclaims as a matter of law.” (CP 1017 at ¶ 25). The trial court granted Ms. Kim’s motion and dismissed the Hur’s counterclaims with prejudice. (CP 1017 at ¶ 28).

E. The Trial Court Improperly Disallowed Mr. Hur’s Motion For Reconsideration as Untimely Under PCLR 7(c)(3).

Mr. Hur filed a motion for reconsideration pursuant to CR pursuant to CR 54(b), CR 59(a), CR 59(a)(7), CR 59(a)(9). (CP 1104). In their Motion for Reconsideration they raised the following issues including Mr. Hur’s Counsel failing to file a Response to Ms. Kim’s Motion to Dismiss due to her illness. (CP 1030 – 1035, 1036 – 1038). Mr. Hur filed a Motion to Continue the hearing on Ms. Kim’s Motion to Dismiss on May 5, 2021.

However, Mr. Hur's counsel remained sick and this Court struck that hearing due to the failure to confirm pursuant to PLCR 7. (CP 1019 – 1025). Mr. Hur's counsel raised the same issues, regarding her illness, in their Motion to Change trial date as were raised in the Motion for Reconsideration. (CP 1030 – 1035, 1036 – 1051). *See Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 300, 840 P.2d 860 (1992); *Zimney v. Lovric*, 59 Wn. App. 737, 801 P.2d 259 (1990).

Mr. Hur's Motion for Reconsideration was timely pursuant to CR 54(b) which provides: the order or other form of decision "is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." The Order of Dismissal *Partial* Counterclaims on Ms. Kim's Motion was neither appealable or final it could not be considered a 'judgment' for purposes of CR 59. (CP 1017 – 1018). Ms. Kim failed to provide the Counter-Plaintiffs with a signed affidavit with her notice of intent to sell as required under Proclamation 20-19(b)(ii). In relation to the signed affidavit requirement, Proclamation 20-19.5 Ms. Kim did not provide the Defendants with the requisite 60 days' notice of the Intent to Sell under Proclamation 20-19. (CP 43 - 48). Rather, the Plaintiff listed the Property on June 15, 2020 and served the Defendants with the "Letter of Intent" on June 17, 2020. (CP 43 – 45). Material issue of fact existed as to whether Ms. Kim breached the agreement to purchase with Mr. Hur. Her letter of intent did not meet the requirements of the Governor's Proclamation 20-19. (CP 1198 – 1205 at 1202).

Reconsideration pursuant to CR 59(a)(7) should have been granted as a material issue of fact existed in relation to Ms. Kim's Letter of Intent.

Additionally, CR 59 (a)(9) allows a trial court to grant a new trial when "substantial justice has not been done."³ The failure to timely file an oppositional response to Ms. Kim's Motion to Dismiss was due to the illness of Mr. Kim's counsel. (CP 1039 – 1061). With the entry of the Order of Dismissal of Partial Counterclaims on May 6, 2021, substantial justice has not been done. As a matter of equity, Mr. Hur requested for reconsideration of the Dismissal Order pursuant to CR 59 (a)(9) and was denied. The Dismissal Order did not issue a decision regarding a money judgment. (CP 1017 – 1018). The Subject Property is currently not in the custody of the sheriff. Proclamation 20-19.5 provided a moratorium on evictions until June 30, 2021. (CP 1190 – 1205). Proper notice of intent to sell was not provided to Defendants pursuant to Proclamation 20-19.5. Considering these facts, the Order Motion to Dismiss Counterclaims should be reversed pursuant to CR 54(b), CR 59(a)(1), CR 59(a)(7), CR 59(a)(9), as the Plaintiff failed to meet the exception noted in Proclamation 20-19(b)(ii), substantial justice has not been met due to counsel's illness.

F. The Trial Court incorrectly entered Judgment in favor of Ms. Kim in the amount of \$40,800 plus attorney fees of \$200.00 and limited any offset of Mr. Hur's damages by his \$60,000.00 payments towards the purchase to Ms. Kim.

³ M.J.F. Holdings, Inc. v. Utt (Wash. App. 2003)

A bench trial was held on October 13 - 14, 2021 on the issue of damages. After briefing from the parties' trial court determined that "the \$60,000 is not before this Court and the Court will not consider it in making a decision in this case any further." (RP 107, 190). The trial court went on to state the reason the issue of the \$60,000 payment was not before the court "And that is because there's no record or payment in this case of this other contract or agreement relating to the property." (RP 190).

In Mr. Hur's brief he raised the issue that Ms. Kim testified that she accepted payments from Mr. Hur, in cash, that were not rental payments. (CP 2299) (RP 123, 124). However, the trial court refused to take any testimony on Ms. Kim's refusal of any payments by Mr. Hur. Ms. Kim also testified that Mr. Hur made rental payments in the form of cash as well for the Subject Property. (RP 123, 124) The Defendant also testified that rental payments were made in cash.

The judicial assistant failed to send out the correct pretrial order to the parties. (RP 142, 143). As a result, the Court and Ms. Kim did not have the Appellant's exhibits before them in time for trial. The Court stated the following: "Judicial Assistant: I did not send them a second order. This is the order for a remote. The Court: They didn't get one? The Judicial Assistant: No. The Court: That's Fine. It does appear that you did comply with the order." (RP 142, 143). This placed the Appellants at a deficit as no parties, other than Mr. Hur, had the exhibits

for trial. Mr. However, On October 22, 2021, the trial court entered a judgment in favor of Ms. Kim with the principal amount of \$40,800 and statutory attorney's fees of \$200.00. Hur filed a Motion for reconsideration on October 25, 2021 which was subsequently denied on October 28, 2021. (CP 2367 – 2375, 2404 – 2407). Mr. Hur then filed this Notice of Appeal on November 4, 2021 (CP 2427 – 2429).

IV. ARGUMENT

A. The trial court abused its discretion in refusing to continue the trial so that Mr. Hur could litigate his claims with counsel that had sufficient time to prepare for trial.

The trial court forced Mr. Hur to continue litigating this case, at no fault of Mr. Hur or counsel, even though the trial court was put on notice that Mr. Hur's counsel was very ill and was instructed to go directly to the Emergency Room by the afterhours pulmonologist due to an abnormal lab, (i.e. positive d-dimer). I was suffering from shortness of breath after receiving the COVID vaccine. (CP 1585, 1586, 1589, 1596, 1598). However, the trial court subsequently denied the motion to continue the trial (CP 1920- 1921). Even with the Mr. Hur's counsel's acute illness the trial court moved forward with the trial, which was on the issue of damages. Mr. Hur's counsel, attempted to diligently represent her client and prepare for trial scheduled for October 13, 2021 and October 14, 2021 despite her acute illness which got worse closer to trial. The trial court abused its discretion

by refusing to grant Mr. Hur's short continuance due to counsel's illness to allow time for her to prepare appropriately.

Damages were the only issue before the trial court and a short continuance under CR 40(d) should be granted if "good cause is shown for a continuance." Whether a motion for continuance should be granted or denied is a matter discretionary with the trial court, reviewable on appeal for manifest abuse of discretion. *Jankelson v. Cisel*, 3 Wash.App. 139, 473 P.2d 202 (1970). In exercising its discretion, the court may properly consider the necessity of reasonably prompt disposition of the litigation; the needs of the moving party; the possible prejudice to the adverse party; the prior history of the litigation, including prior continuances granted the moving party; any conditions imposed in the continuances previously granted; and any other matters that have a material bearing upon the [519 P.2d 997] exercise of the discretion vested in the court. *Balandzich v. Demeroto*, 519 P.2d 994, 10 Wn.App. 718 (Wash. App. 1974) Here, this case was filed by Ms. Kim on August 17, 2020 and prior to trial this case had been pending for some thirteen months and twenty six days. A stipulation for a continuance was filed on October 28, 2020, and due to counsel's illness, there were three previously filed motions to continue the trial date that were granted by the trial court. (CP 174 – 175, 920 – 921, 1543 – 1544). The trial court denied Mr. Hur's order to continue the trial order on September 24, 2021 even when Hur's counsel was suffering severe shortness of breath, dyspnea and fever which complicated her ability to

prepare for trial, and trial began on October 13, 2021. A review of the totality of the circumstances the trial court's denial of Mr. Hur's fourth continuance was untenable or manifestly unreasonable. In *Balandzich* Division One of this Court reviewed the denial of the seventh continuance request where "On July 29, 1971, the sixth occasion, continuance was granted because plaintiff wife was in the hospital and unable to attend trial then scheduled for that day." *Balandzich v. Demeroto*, 519 P.2d 994, 10 Wn.App. 718 (Wash. App. 1974). Again, in this case Mr. Hur's counsel was in the Emergency Room mere weeks before the trial date and provided the court documentation of her symptoms. (CP 1639 – 1896). In *Balandzich* the trial court in granting of the sixth continuance in their order provided the following: "In granting the continuance, however, the court imposed the condition that 'Plaintiffs shall have no more continuances for any reason.'..." *Balandzich v. Demeroto*, at 994.

On the Court's Order on Motions Heard 9/24/21 the trial court orders as follows: "Defendants' Motion for a Trial Continuances is denied. This matter shall go to trial on the date currently set of October 13, 2021. The parties are directed to comply with the Case Schedule and Pretrial Order with respect thereto." The trial court's denial of a continuance is egregious as Mr. Hur's counsel provided specific documentation of her illness and it was clear that the trial could not move forward. (CP 1639 – 1896). A short continuance under the circumstances, as the only issue before the trial court was damages would have been reasonable as cause clearly

existed for a continuance. CR 40(d). While the trial court, understandably, wanted to resolve the dispute a short continuance to ensure Mr. Hur could fairly prepare and try the remaining issue of damages would have been reasonable. The trial court abused its discretion in denying a continuance.

B. The trial court's entry of \$40,800 judgment must be reviewed de novo.

The trial court's entry of final judgment and findings of facts should be reviewed by this court de novo. *Rainier View Court Homeowners Ass'n, Inc. v. Zenker*, 157 Wn.App. 710, 719, 238 P.3d 1217 (2010). The standard of review for a trial court's findings of fact is under a substantial evidence standard, defined as a quantum of evidence sufficient to persuade a fair-minded person that the premise is true. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wash.2d 169, 176, 4 P.3d 123 (2000). The standard of review for questions of law and conclusions of law de novo. *Veach v. Culp*, 92 Wash.2d 570, 573, 599 P.2d 526 (1979). *Rainier View Court*, 157 Wn.App. 710, 719, 238 P.3d 1217. Here, the trial court entered its Findings of Facts and Conclusions of Law on October 22, 2021 (CP 2362 – 2363).

Mr. Hur was unable to present sufficient evidence in relation to the trial court's findings as Ms. Kim had not received his evidence. (RP 143 – 146). In the calculation of damages Mr. Hur stated that

Washington state was the first state hit with COVID-19. We ask this Court to take judicial notice of the proclamations that were subsequently filed by the Governor that protected tenants such as my client and prevented judicial evictions. (RP 195).

After closing arguments were heard on October 14, 2021, the Court subsequently entered its findings of facts and conclusions of law on October 22, 2021 and Judgment. (CP 2362 – 2363 and 2364 – 2366). There is a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise, here that Ms. Kim breached the agreement, is true. (CP 805, 803, CP 183, 193 – 194, 190 – 191, 771 - 784)) Wilson, 87 Wash. App. at 200-01, 940 P.2d 269 (citing Penick v. Employment Sec. Dep't, 82 Wash.App. 30, 37, 917 P.2d 136, review denied, 130 Wash.2d 1004, 925 P.2d 989 (1996)). The facts now in evidence clearly show that the trial court's findings of facts and conclusions of law the trial court erred in the following findings: (1) – (7); and the trial court erred by concluding as follows: (1) – (6). (CP 2362 – 2363).

Mr. Hur filed for a Motion for Reconsideration raising the issues of Ms. Kim's Letter of Intent to Sell not meeting the Governor's Proclamation exception under 21-09 and how this Court's decision *Dzaman* was controlling on this issue. (CP 2368 – 2373) The trial court denied Mr. Hur's Motion, on October 28, 2021 which subsequently resulted in the filing of this appeal. (CP 2404 – 2407). Mr. Hur is entitled to a new trial as the trial court erred when it entered judgment in favor of Ms. Kim and awarded damages of \$40,800 and attorney fees of \$200. Additionally, the trial court erred by making the evidentiary ruling disallowing Mr. Hur's evidence, during trial which was an abuse of discretion (RP 143 – 146). The trial

court's October 22, 2021 judgment, and findings of fact and conclusions of law, should be reversed and remanded for further proceedings. (CP 2362 – 2366).

C. The denial of Mr. Hur's evidence standard reviewed for an abuse of discretion.

Under the Rules of Evidence, "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected." ER 103(a). We review a trial judge's evidentiary rulings for abuse of discretion. *State v. Myers*, 133 Wash.2d 26, 34, 941 P.2d 1102 (1997). *University of Wash. v. Dept. of Health*, 187 P.3d 243, 164 Wn.2d 95 (Wash. 2008). The trial court's judicial assistant failed to send Mr. Hur the proper non-jury trial pre-trial order. (RP 95). The judicial assistant states during the trial: "I did not send them a second order. This is the order for a remote. The Court: They didn't get one? The Judicial Assistant: No. The Court: That's Fine." (RP 142 – 143). This placed Mr. Hur at an extreme difficult position to present his case and cross examine witnesses as no one, excluding Mr. Hur who was present with his counsel, had Mr. Hur's evidence before them. However, Mr. Hur had sent the trial court his trial binder of evidence to the court. But for whatever reason Ms. Kim did not have any access to any of Mr. Hur's evidence that he was trying to present. In *Havens v. C & D Plastics Division* One of this Court that Court held that we review a trial court's decisions on admissibility of evidence for abuse of discretion. *Havens v. C & D Plastics*, 124 Wn.2d 158, 168, 876 P.2d 435

(1994). 'A trial court has `broad discretion in ruling on evidentiary matters and will not be overturned absent manifest abuse of discretion.'" *Cox v. Spangler*, 141 Wn.2d 431, 439, 5 P.3d 1265 (2000), quoting *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 662-63, 935 P.2d 555 (1997). A trial court abuses its discretion `when it takes a view no reasonable person would take, or applies the wrong legal standard to an issue.' *Cox*, 141 Wn.2d at 439. *Howard v. McMillan*, No. 49244-6-I (Wash. App. 5/3/2004) (Wash. App. 2004). Here, the trial court erred in failing to admit into evidence proof of Mr. Hur's \$60,000 payments to Ms. Kim which the parties prepared separate briefs on the issue to the court. (CP 2298 – 2345).

(RP 102 – 105, 141). The trial court abused its discretion when it applied an improper legal standard to the exclusion of the issue of Mr. Hur's \$60,000 payments to Ms. Kim and allowed the trial to continue knowing that all parties did not have the evidence in front of them which placed Mr. Hur at a great disadvantage. (RP 17, 142 – 143). The trial court stated: .

While it has a tinge of unjust enrichment, it's not possible for this Court to consider whether or not it's unjust or not. And that is because there's no record or payment in this case of this other contract or agreement relating to the property. Consequently, the \$60,000 is not before this Court and the Court will not consider it in making a decision in this case any further. (RP 190).

Additionally, the denial of Mr. Hur's evidence to be allowed as part of trial should be reviewed by this court as an abuse of discretion by the trial court. *Univ. of Wash. Med. Ctr. v. Wash. Dep't of Health*, 164 Wn.2d 95,

104, 187 P.3d 243 (2008). The trial court's decision should be reversed and remanded for further proceedings.

D. The trial court's May 6, 2021 Order Granting Partial Counter Claims Must be Reversed and Remanded for Further Proceedings.

"In *Folsom v. Burger King*, 135 Wash.2d 658, 663, 958 P.2d 301 (1998), our Supreme Court said the de novo review standard applies to "all trial court rulings made in conjunction with a summary judgment motion."..." *Keck v. Collins*, 181 Wash.App. 67, 325 P.3d 306 (Wash. App. 2014). In a summary judgment motion, the moving party has the initial burden of showing the absence of an issue of material fact. This burden can be met by showing that there is an absence of evidence supporting the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Young v. Key Pharmaceuticals, Inc.*, 112 Wash.2d 216, 225-26, 770 P.2d 182 (1989). In this situation, the moving party is not required to support the motion by affidavits or other materials negating the opponent's claim. *Celotex*, 477 U.S. at 322-23, 106 S.Ct. at 2552; *Young*, 112 Wash.2d at 225-26, 770 P.2d 182. The moving party must still, however, identify "those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S. at 323, 106 S.Ct. at 2552 (quoting Fed.R.Civ.P. 56); *Baldwin v. Sisters of Providence, Inc.*, 112 Wash.2d 127, 132, 769 P.2d 298 (1989). If the moving party does not meet

this initial burden, summary judgment may not be entered, regardless of whether the opposing party submitted responding materials. *Jacobsen v. State*, 89 Wash.2d 104, 108, 569 P.2d 1152 (1977); see also *Baldwin*, 112 Wash.2d at 132, 769 P.2d 298. Here, Mr. Hur failed to file a response and the trial Court entered an Order granting a dismissal of *partial* counterclaims on May 6, 2021. (CP 1017 – 1018). However, Ms. Kim's Motion for Dismiss failed to provide the facts necessary for the trial court to find that no material issue of existed and for the subsequent entry of the Order of Dismissal *Partial* Counterclaims. (CP 1017 – 1018). CR 54(b).

The standard for review with "[a] grant of summary judgment is reviewed de novo, with the court engaging in the same inquiry as the trial court. *TracFone Wireless, Inc. v. Dep't of Revenue*, 170 Wash.2d 273, 280–81, 242 P.3d 810 (2010); *Wilson v. Steinbach*, 98 Wash.2d 434, 437, 656 P.2d 1030 (1982)." *Wash. Imaging Serv. Llc v. Wash. State Dep't of Revenue*, 171 Wash.2d 548, 252 P.3d 885 (Wash. 2011). In this case CR 54(b) is applicable as the trial court entered an order of Dismissal of *Partial* Counterclaims. [We review a trial court's ruling granting a CR 12(b)(6) motion to dismiss de novo. *Cutler v. Phillips Petroleum Co.*, 124 Wash.2d 749, 755, 881 P.2d 216 (1994), cert. denied, 515 U.S. 1169, 115 S.Ct. 2634, 132 L.Ed.2d 873 (1995). CR 12(b)(6) provides for dismissal of a complaint if it fails to state a claim upon which relief can be granted. *State ex rel. Pub. Disclosure Comm'n v. 119 Vote No! Comm.*, 135 Wash.2d 618, 623, 957 P.2d 691 (1998). Dismissal is warranted only if the court

concludes, beyond a reasonable doubt, the plaintiff cannot prove any set of facts which would justify recovery. *Tenore v. AT & T Wireless Servs.*, 136 Wash.2d 322, 330, 962 P.2d 104 (1998), cert. denied, 525 U.S. 1171, 119 S.Ct. 1096, 143 L.Ed.2d 95 (1999). All facts alleged in the plaintiff's complaint are presumed true. *Tenore* 136 Wash.2d 322, 330, 962 P.2d 104. But the court is not required to accept the complaint's legal conclusions as true....*Rodriguez v. Loudeye Corp.*, 189 P.3d 168, 144 Wash.App. 709 (Wash. App. 2008).

In this case, Ms. Kim included a copy of Hur's Answer and counter claim as appendix of her Motion to Dismiss. (CP 934 – 947). Ms. Kim also included a copy of the receipt provided to Mr. Hur towards the initial payment of the rent to own purchase of the Subject Property in her Motion to Dismiss as Appendix 2. (CP 948 – 949) Additionally, the final payment Mr. Hur attempted to make to Ms. Kim which was also attached as Appendix 3 to Ms. Kim Motion to Dismiss (CP 950 – 951). Ms. Kim's own declaration raises material issues of fact as she states the following: The trial court, in partially granting Ms. Kim's Motion to Dismiss, should have considered all the documents and facts alleged in Hur's complaint as presumed true. (CP 934 – 947). *Tenore* 136 Wash.2d 322, 330, 962 P.2d 104. The trial court stated in their order that having reviewed all submissions by the Plaintiff... "No material issue of act existing this Court concludes that Plaintiff is entitled to an Order dismissing Defendant's counterclaims as a matter of law." (CP 1017). The trial court granted Ms.

Kim's Motion and dismissed Mr. Hur's counterclaims with prejudice leaving the issue of damages for further litigation. (CP 1017). However, Hur's Answer and counterclaim were part of the record and a material issue of fact existed and the trial court erred by failing to consider the facts alleged in Hur's Answer and Counterclaims were presumed true. *Id.* (CP 923 – 953).

The trial court erred in granting the Order of Dismissal *Partial* Counterclaims on May 6, 2021. (CP 1017 – 1018). Material issue of fact existed as to whether Ms. Kim breached the agreement to purchase with Mr. Hur and Ms. Kim was not entitled to entry of the Order of Dismissal *Partial* Counterclaims. (CP 1017 – 1018). These additional facts include those outlined in Ms. Kim's supporting declaration. (CP 952 – 953). In there she claims that "it was my plan to sell the property to realize a capital gain." (CP 952, ¶ 20 -21). And that she "only agreed to the lease and to sell the property to she and Mr. Hur because of this family relationship...I offered to sell him the house for \$150,000 if he completed payment within 2 years." (CP 952, ¶ 23 – 28). Ms. Kim then goes on to reference an email that is dated September 11, 2016 and attached as exhibit 1. (CP 952 – 953). However, respectfully, there does not appear to be any exhibit attached to Ms. Kim's declaration that can be referenced to this brief in relation to the two year completion date that she states. (CP 953, ¶1-2). Mr. Hur stated in his answer to Ms. Kim's complaint and counter claims that the final payment was to be made in January of 2020. (CP 938, ¶14 – 16). It is clear

that a material issue of fact existed, and the trial court erred by granting Ms. Kim's to Dismiss and thereby dismissing all of Mr. Hur's counterclaims. Mr. Hur request this court reverse the trial court's May 6, 2021 Order of Dismissal *Partial Counterclaims and remand for further proceedings.

Mr. Hur subsequently filed a Motion for Reconsideration which was timely pursuant to CR 54(b) which provides: the order or other form of decision "is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." ("Since denial of the partial summary judgment was neither appealable nor final, it cannot be considered a 'judgment' for purposes of CR 59. Therefore, the notice requirements of CR 59 are not applicable to [a motion that seeks reconsideration of a partial summary judgment]."); The facts are similar to *Maybury v. Seattle* as this Court entered an Order dismissing Mr. Hur's Counter-Claims and left the issue of damages to be litigated. In *Maybury* the Court found "there was no genuine issue as to any material fact with respect to the city's liability for the alleged damage sustained by the plaintiff and limited the trial to the issue of damage alone." *Maybury v. City of Seattle*, at 880. Under the same facts of this case, as in *Washburn*, "the partial summary judgment was not a final judgment and the trial court ha[d] authority under CR 54(b) to modify it regardless of CR 60(b)...". However, the trial court improperly deemed Mr. Hur's Motion for Reconsideration as untimely and dismissed all his counterclaims. (CP 1254 – 1255).

Additionally, under CR 59(a)(7), courts have viewed “the evidence in the record in the light most favorable to the nonmoving party to determine whether, as a matter of law, there is no substantial evidence or reasonable inferences to sustain the verdict for the nonmoving party. *Lian v. Stick*, 106 Wn. App. 811, 823-24, at 824, 25 P.3d 467 (2001), (citing *Hizey*, 119 Wn.2d at 271-72). “Evidence is substantial when it is of sufficient quantity to convince an unprejudiced, thinking mind of the truth of the declared premise. *Id.* (quoting *Nord v. Shoreline Sav. Ass’n*, 116 Wn.2d 477, 486, 805 P.2d 800 (1991)). Matters of credibility and weight are reserved for the jury; we do not substitute our judgment. *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 108, 864 P.2d 937 (1994); *State v. O’Connell*, 83 Wn.2d 797, 839, 523 P.2d 872 (1974). Here, given the basis for the partial summary judgment, there exists a genuine issue of material fact that regarding Ms. Kim’s attempted repudiation of the Agreement with Mr. Hur by returning the final payment. (CP 802 – 805). When Ms. Kim clearly knew Mr. Hur had a final payment of \$90,000 in July 13, 2019 when she sent him an email communication stating “Brother-in-law Think of this as a receipt You’ll repay you soon”. (CP 733 – 734). Both documents were filed with the trial court as Mr. Hur’s Evidence/Disclosure of Witnesses. Reconsideration is warranted under when 'there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law.' CR 59(a)(7)." *M.J.F. Holdings, Inc. v. Utt* (Wash. App. 2003).

Mr. Hur admits that he did not file a timely objection to Ms. Kim's Motion to Dismiss her counsel's illness. (CP 1117 – 1247) No potential hardship existed for the opposing party, Ms. Kim, as their Agreement had one final payment of \$90,000.00 and which remained in enforceable. (CP 725 – 726, 732 – 734). Mr. Hur attempted to make the final \$90,000.00 payment on January 30, 2020 to finalize the purchase of the Subject Property. (CP 771). In a July 31, 2019 email to Hur (hereafter "Email") Ms. Kim states, "Brother-in-law. Think of this as a receipt You'll repay you soon." Ms. Kim understood that she was to sell the Subject Property to the Mr. Hur. (CP 732 – 734) However, Ms. Kim has attempted to repudiate the Mr. Hur's agreement multiple times which is material to his counter-claims in order to purchase the subject property. Ms. Kim has been unjustly enriched by her acceptance of the \$60,000.00 and failure to consummate the sale of the Subject Property to Hur. Here, as in *Washburn*⁴, "the partial summary judgment was not a final judgment and the trial court ha[d] the authority under CR 54(b) to modify the Order regardless of CR 60(b)...". *Washburn v. Beatt Equipment Co.*, 120 Wn.2d 246, 840 P.2d 860 (Wash. 1992). Mr. Hur requests that this Court reverse and remand the May 6, 2021 Order of Dismissal *Partial* Counterclaims as a genuine issue of material fact remained and his Motion for Reconsideration was timely under CR 54(b).

⁴ *Washburn v. Beatt Equipment Co.*, 120 Wn.2d 246, 840 P.2d 860 (Wash. 1992).

E. The Commissioner's August 17, 2020 Decision must be reversed as *Dzaman* is Controlling in this Court.

Mr. Hur filed a Motion to Modify, pursuant to RAP 17.7 before this Court, asking whether Proclamation 20-19.4 applied retroactively after on Order granting issuance of the Writ of Restitution, on October 1, 2020, where no Writ has been issued by the Superior Court Clerk prior to the Governor issuing Proclamation 20-19.4 on October 14, 2020. (Appendix II)

This Court has held that a writ of restitution issued after the effective date of Proclamation 20-19.4 requires that the affidavit requirement in that version of the proclamation applied. See *Dzaman v. Gorman*, No. 55460-7-II, 2021 WL 3046849 (Jul 20, 2021). Additionally, "Statutes are presumed to apply prospectively absent contrary legislative intent." *In re Estate of Haviland*, 177 Wn.2d 68, 75, 301 P.3d 31 (2013)." "[A] statute operates prospectively when the precipitating event for the application of the statute occurs after the effective date of the statute, even though the precipitating event had its origin in a situation existing prior to the enactment of the statute." *Id.* (quoting *Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guaranty Ass'n* 83 Wn.2d 523, 535, 520 P.2d 162 (1974))." And also, "[a] statute is retroactive "when the precipitating event under the statute occurred before the statute's enactment." *Haviland*, 177 Wn.2d at 75. "A statute may also act retroactively when it takes away or impairs vested rights or imposes new duties or disabilities in respect to past transactions."...*Dzaman v. Gowman* (Wash. App. 2021). Thus, because no

writ had been issued the requirement that the affidavit be sworn, as stated in Proclamation 20-19.4, applied when the December 11, 2020 Order was issued. (CP 2232 – 2239) and (CP 215 – 216).

As Proclamation 20-19.4 was effective October 14, 2020 and continued in effect until December 31, 2020. The Governor has subsequently issued Proclamation 20-19.5[6] extending the eviction moratorium until March 31, 2021 and Proclamation 20-19.6[7] extending the eviction moratorium until June 30, 2021. Those proclamations contain the same sworn affidavit requirement as Proclamation 20-19.4. *Dzaman v. Gowman* (Wash. App. 2021). The trial court's interpretation of Proclamation 20-19, in its December 11, 2020 Order, should have considered Proclamation 20-19.4 as no writ had been issued and the sworn affidavit requirement pursuant to Proclamation 20-19.4 was applicable. The trial court's misapplication Proclamation 20-19 requires reversal of the December 11, 2020 Order. (App F). The commissioner's decision should be modified accordingly.

A court commits such probable error when the decision substantially alters the current status of one's life or circumstances or the party has no further legal recourse. See e.g. *Costanich v. Washington State Dep't of Soc. & Health Servs.*, 164 Wn.2d 925, 933, 194 P. 3d 988, 992 (2008). The December 11, 2020 ruling substantially limited the freedom of Hur to act, as if it was enforced and Hur is evicted, a post-trial appeal cannot remedy the harm to Hur. In *Costanich*, the Court granted discretionary review, and

found the decision limited that party's freedom to act because they had no further legal recourse to pursue attorney's fees as the appellate decision reversed an award of attorney's fees. *Id.*, 164 Wn.2d at 990. Here, in the December 11, 2020 Order the Court states, "Proclamation 20-19 was effective as of April 1. Defendants received all notices required under applicable law for issuance of a Writ of Restitution." However, no writ had been issued and the trial court erred by failing to properly apply the sworn affidavit requirement pursuant to Proclamation 20-19.4 and thereby limited the freedom of Mr. Hur to act as a post-trial appeal cannot remedy the harm to Mr. Hur if the Order is enforced, and Hur is evicted.

The Commissioner erroneously found that the "writ of restitution was issued on October 1, 2020" where, under these facts, no writ had been issued by the Clerk on that date. (CP 1565). As such the Commissioner, as did the trial court, did not apply Proclamation 20-19.4 retroactively, and the sworn affidavit requirement was not applicable. The Commissioner also incorrectly ruled Hur "fail[ed] to show that the trial court probably erred in denying their motion for revision." (CP 1566). The Commissioner also ruled that there was no finding of "probable error, and because Mr. Hur failed to address the effect prong, it does not address whether the trial court's decision substantially alters the status quo or substantially limits Mr. Hur's freedom to act post-trial appeal. (CP 1566). As no writ had been issued, the trial court should have applied the requirement that Kim's 60-

day notice⁵ be in the form of a sworn affidavit as Proclamation 20-19.4 applied. See *Dzaman v. Gorman*, No. 55460-7-II, 2021 WL 3046849 (Jul 20, 2021). (CP 166). The trial court's December 11, 2020 Order, by not applying Proclamation 20-19.4, substantially altered the status quo of Mr. Hur. The trial Court committed probable error by failing to apply Proclamation 20-19.4, as no writ had been issued by the entry date of the Order on December 11, 2020, and it thereby substantially limited the freedom of Hur to act, if it was enforced and Hur is evicted, a post-trial appeal cannot remedy the harm to Hur.

V. ATTORNEY FEES

Mr. Hur requests reasonable attorney fees as pursuant to RAP 18.1 (a) [i]f applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court. This appeal is brought after litigation in the trial court and a consolidation of a discretionary review case pending before this court.

⁵ See Motion for Discretionary Review filed June 22, 2021

VI. CONCLUSION

Even though each of the trial court's error justifies a new trial itself, the cumulative effective of the trial court's repeated errors was a patently unfair trial. See *Rookstool v. Eaton*, 12 Wn. App.2d 301, 311 ¶ 24, 457 P.3d 1144 (2020) (cumulative error doctrine applies in civil cases). Accordingly, this Court should vacate the trial court's judgment and reverse and remand for a new trial resolving all of Mr. Moon Hur and Seungja Hong's claims. requests fees and costs pursuant to RAP 18.1(a) and other justifiable relief.

RESPECTFULLY SUBMITTED this 26th day of August, 2022

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CERTIFICATE OF SERVICE

The undersigned certifies that on the date written below, a true and correct copy of this document was served on each of the parties below as follows:

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